

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

UNITED STATES OF AMERICA )

Plaintiff, )

vs. )

ROBERT DAVID KAHRE, *et al.*, )

Defendants. )

2:05-CR-0121-RCJ-RJJ

**ORDER**

This matter comes before the Court on Defendant Lori Kahre's Request for Federal Rule of Evidence 104 Hearing (#1266). Also before the Court are Motions for Joinder filed by Defendants Robert Kahre (#1287), Alexander Loglia (#1319), and Joel Axberg (#1336). The Court has considered the Motions, the pleadings on file, and oral argument on behalf of the parties and hereby issues the following Order.

**DISCUSSION**

**I. Defendants' Request for Rule 104 Hearing**

In her Opposition to the Government's Notice of Intent to Use Summary/Expert Testimony (#1266), Defendant Lori Kahre asks the Court to hold a Federal Rule of Evidence 104 hearing during trial before the Court determines whether, and to what extent, it will permit summary expert testimony from IRS Revenue Agent Joe Burns.

The Government potentially will introduce more than 20,000 pages of documentary evidence, scores of witnesses, and expects its case-in-chief to last four to six weeks. Near the

1 end of its case, the Government plans to have IRS Agent Joe Burns take the stand as a  
2 summary/expert witness. Defendants ask the Court to hold a Rule 104 hearing to prevent  
3 improper opening/closing arguments during summary presentations.

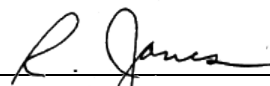
4 **A. Summary Evidence**

5 The Ninth Circuit allows summary evidence in complex cases. *See, e.g., United States*  
6 *v. Olano*, 62 F.3d 1180 (9th Cir. 1995). However, a district court should only allow summary  
7 evidence in exceptional cases. *Id.* at 1204. To admit such evidence, the government must lay  
8 a foundation for the summary evidence outside the presence of the jury, provide defendants an  
9 opportunity to review the summary evidence prior to its admission, and if applicable, the Court  
10 must give limiting instructions informing the jury that neither the agent's summary testimony  
11 nor any charts etc are admissible as substantive evidence, other than as summary for admitted  
12 or otherwise admissible and available evidence. *Id.* (citations omitted). At oral argument the  
13 Government did not object to Defendants' request. Because the Court finds that summary  
14 evidence may be appropriate in this case, it grants Defendants' request and will implement the  
15 procedural safeguards noted above.

16 **CONCLUSION**

17 Pursuant to the above analysis, IT IS HEREBY ORDERED that Defendants' Request for  
18 Federal Rule of Evidence 104 Hearing is *granted*. IT IS FURTHER ORDERED that  
19 Defendants' Motions for Joinder (#1287, #1319, and #1336) are *granted*.

20 DATED: July 13, 2007

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23 ROBERT C. JONES  
24 UNITED STATES DISTRICT JUDGE  
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